

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.344 OF 2020

- 1] Sumanbai w/o. Ganpat Kakade,
Age: 48 Years, Occu. Household.
- 2] Pushpa w/o. Omprakash Kakade,
Age: 28 years, Occu. Household.
- 3] Ganpat s/o. Vithoba Kakade,
Age: 55 Years, Occu. Agril.

All are R/o. Yelki, Tq.Kalamnuri,
Dist. Hingoli. **.. APPELLANTS**

VERSUS

- 1] The State of Maharashtra,
Through Akhada Balapur Police Station,
Dist. Hingoli.
- 2] Seema w/o. Shankar Bagate,
Age: 26 years, Occu. Labour,
R/o. Yelki, Tq.Kalamnuri,
Dist. Hingoli. **.. RESPONDENTS**

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Mr.Dhananjay M.Shinde, Advocate for the
appellants.
Mr.S.N.Morampalle, APP for the respondent-
State.
Mr.Dhanraj Ingole [Appointed], Advocate for
the respondent no.2.

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CORAM : V.L.ACHLIYA,J.
DATE : 24.07.2020

ORDER :

1] Heard.

2] Admit.

3] With the consent of the learned counsel for the appellants, learned APP for the respondent-State and learned counsel for the respondent no.2, appeal is heard finally at the stage of admission.

4] Being aggrieved by the order dated 10.06.2020 passed in Criminal Bail Application No. 139/2020, refusing to grant pre-arrest bail to the appellants, the appellants have preferred this Appeal under Section 14-A of the Scheduled Castes and the Scheduled Tribes [Prevention of Atrocities] Act, 1989 [hereinafter referred to as 'said Act'].

5] By referring overall facts of the

case and the first information report lodged by the learned informant, learned counsel for the appellants submits that the order passed by the learned Additional Sessions Judge is perverse and not sustainable in law. It is submitted that the offence under the Scheduled Castes and the Scheduled Tribes [Prevention of Atrocities] Act, 1989 not prima facie attracted against the appellant – accused nos.3 to 5. The act inviting offence u/s. 3 [1] [r] and 3 [1] [s] of the said Act prima facie i.e. abusing the informant in the name of the case with intent to insult, intimidate or humiliate being a scheduled caste has been attributed only against accused no.1 Omprakash Kakade, who has been arrested and released on bail.

6] In the complaint filed, the informant has alleged that on 27.05.2020 accused no.1 Omprakash Kakade stood on the

road passing in front of her house and stated that *"May zav he Dhedge Laya Majlet"*. When the informant questioned as to whom he was abusing. While verbal quarrel was going on between them, she called her husband by contacting him on phone and asked him immediately come to house. When her husband reached to house and asked accused no.1 Omprakash Kakade as to whom he was abusing the accused no.2 Ramesh Kakade and accused no.3 Sumanbai Kakade reached there with wooden log. Therefore, the informant and her husband also took wooden log in their hands and stood in their door. It is alleged that accused no.3 Sumanbai caught hold her hair and hands and accused no.4 Pushpa assaulted on her head. When her husband came to rescue her, the accused nos.1 and 2 assaulted her husband by fist and blows. Her husband brought her to Police Station, Balapur. The Police referred her for treatment. On next

day i.e. on 28.05.2020 at about 6.00 a.m. accused no.1 again came in front of her house and once again abused in the name of the caste. He asked his wife Pushpa to bring container of *chatni* i.e. *chilly powder*. She brought the container of chatni and thrown it on the person of the informant. It is further alleged that accused nos.1 and 5 slapped her husband and threatened to kill them.

7] In the background of allegations made in the complaint lodged it is contended that the allegations made as to abusing the informant in the name of the caste has been attributed solely against the accused no.1. There are no allegations that the accused nos.2 to 5 abused the informant and her husband in the name of the caste with an intention to insult, intimidate or humiliate them in public view being a member of scheduled caste. In that view, the Court

below failed to apply the mind while dealing with an application seeking pre-arrest bail filed by the appellants – accused nos.3 to 5.

8] By referring the decisions in the cases of *Chandra Kanjappa Kuchchikurve Vs. State of Maharashtra & others* reported in 2013 [1] Bom.C.R. [Cri.] 617, *Prathvi Raj Chauhan Vs. Union of India and others* reported in 2020 DGLS (SC) 163, in the case of *Vijaymala w/o. Tanaji Dolare Vs. The State of Maharashtra & another* in Criminal Appeal No.1163 of 2019 decided on 18.02.2020 [Bombay High Court Bench at Aurangabad] and in the case of *Kisan Rupa Pawar & another Vs. The State of Maharashtra* and others in Criminal Writ Petition No.955 of 2019 decided on 05.11.2019 [Bombay High Court Bench at Aurangabad], learned counsel submits that it is quite settled legal position that there is no absolute bar operate against grant of

anticipatory bail in cases leading to registration of offence under the Scheduled Castes and the Scheduled Tribes [Prevention of Atrocities] Act, 1989. If no *prima facie* case found against a person on judicial scrutiny, the Court can exercise powers under Section 438 of the Criminal Procedure Code to protect the life and liberty of a person guaranteed under Article 21 of the Constitution of India.

9] On the other hand, learned APP and learned counsel representing the informant – respondent no.2 supported the impugned order passed by the learned Additional Sessions Judge. However, they fairly conceded that in the first information report lodged the informant has attributed no act amounting to intentional act of insult or intimidate to appellants committed with intent to humiliate her being a member of scheduled caste that

too within public view. It is submitted that if the appeal is allowed and the appellants are granted anticipatory bail, there is every likelihood that they may commit offence of similar in nature and pressurizing the informant and other witnesses from deposing against them.

10] I have carefully examined the reasons and findings recorded by the learned Additional Sessions Judge in the light of first information report lodged by the informant. It is evident from the allegations made in the first information report lodged by the informant that the act of abusing the informant that abuses given referring to caste of informant attributed only against the accused no.1 Omprakash Kakade. No allegations of giving abuses referring to caste of informant and her husband have been attributed against the appellants-accused

nos.2 to 5. The allegations made in the first information report at the most attract offences under Section 324, 294, 504, 506 r/w. 34 of the IPC against the appellants. In that view there is absolutely no case to prosecute them for committing offence under Section 3 [1] [r] and 3 [1] [s] of the said Act.

11] In the impugned order learned Additional Sessions Judge has observed that there are no allegations of abusing the informant referring to her caste made against the appellants. It is also observed that the words referring to caste of the informant and her husband are made only against accused no.1—Omprakash Kakade. It is specifically observed that offences under Section 3 [1] [r] and 3 [1] [s] of the said Act are not applicable against the appellants in the light of the allegations made against them in

the first information report. It is further observed that on the basis of the allegations made in the First Information report at the most offences under Section 323 and 324 r/w. 34 of the IPC would be applicable against the appellants but offence under Section 3 [2] [va] of the said Act attracted against them and bar operate under Section 18 and 18-A of the said Act.

12] In my view, the impugned order passed by learned Additional Sessions Judge is totally perverse and contrary to law. It is settled position in law that in order to attract the offence under Section 3 [1] [r] and 3 [1] [s] of the said Act, the act complained must have been committed by the accused with an intention to insult or intimidate a person being a member of scheduled caste and scheduled tribe. All the insults and intimidation to a person will not

be a offence under the said Act unless such insult or intimidation is on account of victim being a scheduled caste and scheduled tribe.

13] In order to attract offences U/Sec. 3(1)(r) and 3(1)(s) of the Atrocities Act, there must be a *prima facie* evidence to attract the commission of offence under said Act. Section 3(1)(r) and 3(1)(s) of the Atrocities Act, reads as under :

3. Punishments for offences of atrocities-

(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, -

(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

(s) abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view.

14] Thus, the plain reading of the provisions itself spell out in order to attract the provisions of section 3(1)(r) and 3(1)(s) of the Atrocities Act, there must be allegations sufficient enough to prima facie reflect that the accused had acted with intention to insult or intimidate the victim, belonging to a scheduled caste or scheduled tribe and that too within public view.

15] In order to attract the offence under Sec.3 of Atrocities Act, it is *sine qua non* that the act inviting offence under Atrocities Act must have been committed by the person not belonging to Scheduled Caste or Scheduled Tribe. So also it should have been committed with intention to insult, intimidate or humiliate such person being the member of Scheduled Caste or Scheduled Tribe and that too in public view. The basic ingredients of the offence under Section 3

[1] [r] of the Act are "1) intentional insult or intimidation with intent to humiliate a person – victim being a member of a Scheduled Caste or a Scheduled Tribe and 2) such act must have committed at place within public view". If the act complained abusing victim committed intentionally with a view to insult and intimidate a victim being a member of scheduled caste and scheduled tribe in public view then only the offence under Section 3 [1] [r] and 3 [1] [s] of the said Act attract against the accused named in the complaint.

16] In the instant case, there are no allegations against the appellants that they had intentionally insulted, intimidated or humiliated the informant and her husband being a member of the scheduled caste and scheduled tribe. In that view, no case to prosecute them under Section 3 [1] [r] and 3 [1] [s] lies against the appellants.

17] It is quite settled position in law that bar under section 438 of Cr.P.C. operates if there is prima facie case to establish the commission of offence under the provisions of the Atrocities Act against the appellants. It is also quite settled position in law that the offence under the said Act not attract merely due to reason that the informant is a member of scheduled caste unless there is an intention on the part of the accused to humiliate a member of scheduled caste or scheduled tribe for the reason that the victim being member of scheduled caste or scheduled tribe. In absence of prima facie case, satisfying the necessary ingredients of offence under the provisions of the Atrocities Act, the Courts of law are not precluded to entertain the application seeking pre-arrest bail to protect the liberty of a person.

18] In the facts and circumstances of the case and more particular absence of allegations attracting offence under Section 3 [1] [r] and 3 [1] [s] of the said Act made against the appellants, no bar operate under Section 18 of the said Act to entertain the application seeking pre-arrest bail. In that view, the order passed by the learned Additional Sessions Judge is perverse and not sustainable in law. I am, therefore, inclined to allow the appeal. Accordingly, the appeal is allowed and the following order is passed:

ORDER

1] Appeal is allowed in terms of prayer clauses-A and B.

2] In the event of arrest of the appellants in connection with the offences punishable under Sections 324, 294, 504, 506 r.w. 34 of the Indian Penal Code and section 3 [1] [r] and 3 [1] [s] of the Scheduled Castes and the Scheduled Tribes [Prevention

of Atrocities] Act, 1989, registered vide C.R.No.207 of 2020 with Police Station Akhada Balapur, District Hingoli, the appellants be released on their furnishing bail in the sum of Rs.10,000/- each, with one surety in the like amount on the following conditions:

- a] The appellants shall appear before the Officer incharge of the concerned Police Station on 31st July, 2020 at 11.00 a.m. and to offer themselves for conducting investigation of the case.
- b] After 31st July, 2020, the appellants shall make themselves available for investigation as and when required to attend the Police Station by written communication received from the Officer incharge of the Police Station.
- c] The appellants shall not indulge into act of causing threat to the informant and her family members.

3] Appeal is disposed of in above terms.

4] Fees as per the Rules be paid to Advocate Mr.Dhanraj Ingole, counsel appointed to represent the respondent no.2.

[V.L.ACHLIYA]
JUDGE

DDC